

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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ROBIN NEWBERRY, Personal Representative of  
the Estate of DIANE LAITY,

Plaintiff-Appellant,

v

PAUL BLAKELY SCADDAN, M.D.,

Defendant-Appellee,

and

MARK GREENBAIN, M.D., and ROBERT LEE,  
d/b/a LEE'S AFC HOME, II,

Defendants.

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Before: Zahra, P.J., and Cavanagh and Jansen, JJ.

PER CURIAM.

In this wrongful-death, medical-malpractice action, plaintiff appeals as of right following the jury's verdict of no cause of action. We affirm.

The decedent's cause of death was pneumonia, which resulted from a subdural hemorrhage. Evidence at trial provided that the decedent, who suffered from paranoid schizophrenia and had been in an adult foster care home for an extended period of time, had a history of falling. Plaintiff's theory of professional negligence against defendant Paul Scaddan, M.D. (defendant),<sup>1</sup> rested primarily on defendant's decision to discharge the decedent from the hospital and to return the decedent to her foster care home rather than to a long-term medical care facility. Plaintiff also challenged defendant's decision to re-prescribe Lithium given the decedent's condition at the time.

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<sup>1</sup> The remaining defendants were dismissed with prejudice and are not parties to this appeal.

Plaintiff first argues that the trial court abused its discretion by refusing to admit certain photographs of the decedent taken shortly before the decedent's death. We have reviewed the photographs and the entirety of the evidence elicited at trial. Even assuming arguendo that the trial court abused its discretion by excluding the photographs at issue, we conclude that any error was harmless. Error requiring reversal may not be predicated on an evidentiary ruling unless a substantial right was affected or unless the error appears inconsistent with substantial justice. *Craig v Oakwood Hosp*, 471 Mich 67, 76; 684 NW2d 296 (2004); see also MCR 2.613(A). The failure to admit the photographs in this case, which related only to potential damages for conscious pain and suffering, was not inconsistent with substantial justice because the jury found that defendant had not committed malpractice in the first instance. In other words, the issue of damages never came into play because the jury determined that defendant had not been professionally negligent. Because the photographs were not relevant to the determination of professional negligence, but were only relevant to the issue of damages, we perceive no error requiring reversal.

Plaintiff next argues that the trial court erred by failing to give certain requested special jury instructions. We disagree. We review for an abuse of discretion the trial court's decision regarding special jury instructions. *Chastain v Gen Motors Corp*, 254 Mich App 576, 590; 657 NW2d 804 (2002).

Relevant portions of the standard Michigan Civil Jury Instructions must be given in each action in which they apply, accurately state the law, and are requested by a party. MCR 2.516(D)(2). However, "[w]hen the standard jury instructions do not adequately cover an area, the trial court is obligated to give additional instructions when requested, if the supplemental instructions properly inform the jury of the applicable law and are supported by the evidence." *Bouverette v Westinghouse Electric Corp*, 245 Mich App 391, 401-402; 628 NW2d 86 (2001). A trial court may give an instruction not covered by the standard instructions if the instruction accurately states the law, is understandable, concise, conversational, and nonargumentative. MCR 2.516(D)(4).

Supplemental instructions need not be given if they would add nothing to an otherwise balanced and fair jury charge nor enhance the ability of the jury to decide the case intelligently, fairly, and impartially. Moreover, it is error to instruct a jury with regard to a matter not sustained by the evidence or the pleadings. Jury instructions are to be reviewed in their entirety, and there is no error requiring reversal if, on balance, the theories of the parties and the applicable law were fairly and adequately presented to the jury. [*Novi v Woodson*, 251 Mich App 614, 630-631; 651 NW2d 448 (2002) (citations omitted).]

Requested special jury instructions Nos. 1, 2, and 3 dealt with the applicable standard of care and due diligence. However, M Civ JI 30.01, the standard jury instruction concerning the standard of care, already covered these matters. Because the standard instruction applied to this action, was given to the jury, and was otherwise balanced and fair, we perceive no error in the court's refusal to give the first three requested special instructions.

Requested special jury instruction No. 5 dealt with the failure to timely diagnose a condition, and addressed a physician's use of "all scientific facilities." However, the requested

instruction did not define the meaning of the phrase “all scientific facilities” and was neither understandable nor conversational. See MCR 2.516(D)(4). Because the requested instruction was not self-explanatory and would not have been readily understandable to a lay jury, we cannot conclude that the trial court abused its discretion by declining to give the requested instruction. *Chastain, supra* at 590.

Lastly, requested special jury instruction No. 6 dealt with what has been referred to as the patient abandonment theory. The trial court properly refused to give this instruction because plaintiff did not pursue a patient abandonment theory at trial. Indeed, as noted previously, plaintiff argued primarily that defendant was responsible for the decedent’s death by discharging her to her foster care home rather than to a long-term medical care facility. Moreover, the jury was charged with M Civ JI 30.01 and M Civ JI 30.03, which completely and adequately covered the relevant medical-malpractice theories pursued in this action. See *Chastain, supra* at 591 (stating that “we will not find error requiring reversal if, on balance, the trial court adequately and fairly conveyed the applicable law and theories of the parties to the jury”). We find no error in this regard.

Affirmed.

/s/ Brian K. Zahra  
/s/ Mark J. Cavanagh  
/s/ Kathleen Jansen